

419th District Court

Case Summary

Case No. D-1-GN-24-001670

SHARON FLEMING vs. GATEWAY SQUARE LLC, WPG
TEXAS PROPERTIES, LLC, WASHINGTON PRIME
MANAGEMENT ASSOCIATES, LLC

§
§
§

Location: 419th District Court
Judicial Officer: 419TH, DISTRICT COURT
Filed on: 03/14/2024

Case Information

Case Type: Premises
Case Status: 03/14/2024 Open

Assignment Information

Current Case Assignment

Case Number D-1-GN-24-001670
Court 419th District Court
Date Assigned 03/14/2024
Judicial Officer 419TH, DISTRICT COURT

Party Information

Plaintiff FLEMING, SHARON

RUTTER, PETER J
Retained

Defendant GATEWAY SQUARE LLC

Aguirre, Alma J
Retained

ULTA SALON, COSMETICS & FRAGRANCE, INC.

SMITH, SARAH RUSSELL
Retained

CATALANI, AMANDA LEIGH
Retained

WASHINGTON PRIME MANAGEMENT ASSOCIATES, LLC

Aguirre, Alma J
Retained

WPG TEXAS PROPERTIES, LLC

Case Events

03/14/2024 ORIGINAL PETITION/APPLICATION (OCA)
PLAINTIFF S ORIGINAL PETITION
Party: Plaintiff FLEMING, SHARON

03/14/2024 OTHER/NOTICE
SERVICE REQUEST

04/04/2024 UNEXECUTED RETURN OF SERVICE
RETURN OF NON SERVICE - WPG TEXAS PROPERTIES, LLC
Party: Plaintiff FLEMING, SHARON

05/14/2024 EXECUTED SERVICE
EXECUTED CITATION ULTA SALON COSMETICS AND FRAGRANCE INC
Party: Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC.

05/15/2024 EXECUTED SERVICE
EXECUTED RETURN SERVICE OF CITATION -GETAWAY SQUARE, LLC
Party: Plaintiff FLEMING, SHARON

Case Summary

Case No. D-1-GN-24-001670

05/15/2024 EXECUTED SERVICE

EXECUTED RETURN SERVICE OF CITATION - WASHINGTON PRIME MANAGEMENT ASSOCIATES, LLC.

Party: Plaintiff FLEMING, SHARON

06/06/2024

ORIGINAL ANSWER/WAIVER

DEFENDANTS GATEWAY SQUARE LLC AND WASHINGTON PRIME MANAGEMENT ASSOCIATES ANSWER TO PLAINTIFF S ORIGINAL PETITION

Party: Defendant GATEWAY SQUARE LLC;

Defendant WASHINGTON PRIME MANAGEMENT ASSOCIATES, LLC

06/07/2024 OTHER/NOTICE

NOTICE OF APPEARANCE

Party: Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC.

06/10/2024

ORIGINAL ANSWER/WAIVER

DEFENDANT ULTA BEAUTY, INC. S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES IN RESPONSE TO PLAINTIFF S ORIGINAL PETITION

Party: Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC.

Service Events

03/18/2024 **Citation**

GATEWAY SQUARE LLC

Served: 05/15/2024

03/18/2024 **Citation**

ULTA SALON, COSMETICS & FRAGRANCE, INC.

Served: 05/14/2024

03/18/2024 **Citation**

WASHINGTON PRIME MANAGEMENT ASSOCIATES, LLC

Served: 05/15/2024

03/18/2024 **Citation**

WPG TEXAS PROPERTIES, LLC

Returned Unserved

04/04/2024

[illegible]

 JUDICIAL DISTRICT

DEFENDANTS.

PLAINTIFF'S ORIGINAL PETITION

EXHIBIT D-1

2.01 Defendant Gateway Square LLC (“Gateway”) is a foreign limited liability company organized under the laws of the State of Delaware, with its principal place of business in the State of Delaware, and doing business in the State of Texas. Defendant Gateway can be served with process by serving its registered agent, CT Corporation System, via private process server at 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever service may be accomplished. *Issuance of citation is requested at this time.*

2.02 Defendant WPG Texas Properties, LLC (“WPG Texas”) is a domestic limited liability company organized under the laws of the State of Texas, with its principal place of business in the State of New Jersey, and doing business in the State of Texas. Defendant WPG Texas can be served with process by serving its registered agent, Paracorp Incorporated, via private process server at 3610-2 North Josey Lane, Suite 223, Carrollton, Texas 75007, or wherever service may be accomplished. *Issuance of citation is requested at this time.*

2.03 Defendant Washington Prime Management Associates, LLC (“Washington Prime”) is a foreign limited liability company organized under the laws of the State of Indiana, with its principal place of business in the State of Ohio, and doing business in the State of Texas. Defendant Washington Prime can be served with process by serving its registered agent, CT Corporation System, via private process server at 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever service may be accomplished. *Issuance of citation is requested at this time.*

2.04 Defendant Ulta Salon, Cosmetics & Fragrance, Inc. (“Ulta”) is a foreign corporation, organized under the laws of the State of Delaware, with its principal place of business in the State of Illinois, and doing business in the State of Texas. Defendant Ulta can be served with process by serving its registered agent, Prentice Hall Corporation System, via private process server at 211

East 7th Street, Suite 620, Austin, Texas 78701, or wherever service may be accomplished.
Issuance of citation is requested at this time.

2.05 In the event any parties are misnamed or not included herein, such event was a “misnomer,” or such parties are or were “alter-egos” of parties named herein.

III.

JURISDICTION AND VENUE

3.00 Jurisdiction and venue are proper in this Court in that Travis County is the county in which all or a substantial part of the events or omissions giving rise to this claim occurred. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

3.01 This Court has jurisdiction over this cause of action because Plaintiff’s damages are within the jurisdictional limits of this Court and all conditions precedent have been performed or have occurred.

IV.

FACTS

4.00 On June 4, 2022, Plaintiff was an invitee at the Ulta Beauty store in the Gateway Market Shopping Center located at 9607 Research Boulevard, Suite 600, in Austin, Travis County, Texas (the “Premises”), which upon information and belief was owned, operated, controlled, possessed, managed, and/or otherwise under the dominion of Defendants.

4.01 At the time of the incident in question, Plaintiff had just finished shopping at the Premises. As she exited the store, Plaintiff held the door open for another customer who had a young child with her. Once the other customers entered the store, Plaintiff turned around and suddenly and without warning, was caused to fall due to an unreasonably dangerous condition that was placed directly in front of the door and fell forwards up the set of stairs.

4.02 At the time of the incident in question, there were no markings on the stairs or signs, warning invitees of any danger. Plaintiff did not have knowledge of the dangerous condition and could not have reasonably been expected to discover it prior to the incident. Defendants' failure to condition and/or failure to adequately warn Plaintiff constituted negligence, and such negligence was the proximate cause of the occurrence in question and Plaintiff's resulting severe injuries.

4.03 As a result of the incident in question, Plaintiff sustained severe bodily injuries and damages, which were caused as a direct result of Defendants' negligence.

V.
VICARIOUS LIABILITY/RESPONDEAT SUPERIOR

5.00 Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff hereby adopts the allegations made in all preceding paragraphs of this Original Petition as if fully set forth herein.

5.01 Whenever an allegation is made as to Defendants, it is meant that the employees, agents, officers, representatives or servants of Defendants did such act or failed to do such act, and at the time such act or omission occurred, it was with full knowledge, authorization or ratification of Defendants, or was done in the normal and routine course and scope of the employment or agency of such person with Defendants.

5.02 Under the doctrine of *Respondeat Superior*, Defendants are liable to Plaintiff for the actions or omissions of its employees, agents, officers, representatives or servants, whether taken singularly or in any combination, in relation to the facts underlying this complaint, as described herein and as further will be revealed through the discovery and litigation of this matter. Therefore, any liability found against Defendants' employees, agents, officers, representatives or servants should be imputed jointly and severally to Defendants.

VI.
NEGLIGENCE OF DEFENDANTS

6.00 Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff hereby adopts the allegations made in all preceding paragraphs of this Original Petition as if fully set forth herein.

6.01 The Premises was owned, operated, controlled, possessed, managed, and/or otherwise under the dominion of Defendants, at the time of the incident in question. Defendants were negligent in the following aspects:

- a. Creating an unreasonably dangerous condition;
- b. Failure to keep the Premises reasonably safe for others;
- c. Failure to give adequate and comprehensible warnings to Plaintiff of the unreasonably dangerous condition;
- d. Failure to anticipate Plaintiff's, and others similarly situated, inability to take measures to avoid the risk of the inherently dangerous condition;
- e. Failure to recruit, select, and hire competent employees, management, contractors, subcontractors, and person under their control, actual and/or contractual, capable of locating, preventing, reducing, eliminating, and warning about unreasonably dangerous conditions;
- f. Failure to ensure that their employees, management, contractors, subcontractors, and persons under their control, actual and/or contractual, reduce or eliminate any unreasonably dangerous conditions on the Premises;
- g. Failure to adequately supervise their employees, management, contractors, subcontractors, and persons under their control, actual and/or contractual, to ensure that they are locating, preventing, removing, and warning about dangerous conditions on the Premises;
- h. Failure to ensure that their employees, management; contractors, subcontractors, and persons under their control, actual and/or contractual, adequately train their employees and/or contract workers in locating, preventing, reducing, eliminating, and warning about unreasonably dangerous conditions on the Premises; and
- i. Failure to exercise ordinary care as a responsibly prudent business would have done under the same or similar circumstances.

6.02 Each of the above-mentioned acts or omissions committed by Defendants, directly or indirectly caused Plaintiff's damages.

VII.
GROSS NEGLIGENCE OF DEFENDANTS

7.00 Pursuant to Rule 58 of the Texas Rules of Civil Procedure, Plaintiff hereby adopts the allegations made in all preceding paragraphs of this Original Petition as if fully set forth herein.

7.01 Plaintiff would further show that Defendants individually and through their employees, contractors, subcontractors, and/or persons under their control were grossly negligent in causing the incident in question, which resulted in Plaintiff's injuries and damages. Defendants and their employee(s), contractors, subcontractors, and/or persons under their control evidenced conscious indifference to the rights, safety and welfare of others in the manner that the Premises was maintained by persons who either lacked experience and were negligent to learn the proper way to do so, or who had the proper knowledge, but did not utilize the training they received.

7.02 The acts and/or omissions of Defendants are of such a character to rise to the level of gross negligence. Furthermore, Plaintiff would show that the acts and/or omissions of Defendants were carried out with a conscious disregard to the extreme danger of risk or the rights of others.

7.03 Defendants had actual subjective awareness that the above referenced acts and/or omissions would, in reasonable probability, result in serious personal injury or death.

7.04 Defendants engaged in acts or omissions that, when viewed objectively from their standpoint at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm and/or death to others, including Plaintiff.

7.05 The above acts and/or omissions were singularly and cumulatively a proximate cause of the occurrence in question and the resulting injuries and damages sustained by Plaintiff.

VIII. **DAMAGES**

8.00 As a direct and proximate result of the negligent conduct of Defendants, Plaintiff suffered bodily injuries as reflected in the medical records from Plaintiff's health care providers that have treated her for the injuries she sustained during the incident in question. These injuries are likely to be permanent in nature. Plaintiff's injuries have had an effect on her health and well-being. As a further result of the nature and consequences of her injuries, Plaintiff has suffered and will likely continue to suffer physical pain and mental anguish in the future.

8.01 As a further result of all of the above, Plaintiff has incurred expenses for medical care and attention in the past and is likely to incur medical expenses in the future to treat the injuries she sustained during the incident in question.

8.02 Plaintiff respectfully requests that the trier of fact determine the amount of damages and losses for:

- a. Past and future physical pain;
- b. Past and future mental anguish;
- c. Past and future medical expenses;
- d. Past and future physical impairment;
- e. Past and future disfigurement;
- f. Past lost wages; and
- g. Future loss of earning capacity.

8.03 Based on Defendants' conduct, Plaintiff is entitled to an award of exemplary damages. Defendants' conduct should be penalized and punished, and others in similar position to Defendants should be deterred from committing such acts or omissions in the future.

8.04 The damages sought by Plaintiff are within the jurisdictional limits of this Court.

8.05 Plaintiff affirmatively states that she seeks monetary relief of over \$1,000,000.00 and demand a judgment for all other relief to which Plaintiff is justly entitled at the time of filing this suit, which, with the passage of time, may change.

IX.
INTEREST

9.00 Plaintiff further requests both pre-judgment and post-judgment interest on all damages as allowed by law.

X.
JURY DEMAND

10.00 Plaintiff demands a trial by jury and tenders the appropriate fee with the filing of this petition.

XI.
NOTICE OF SELF-AUTHENTICATION

11.00 Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendants are hereby noticed that the production of any document or things in response to Plaintiff's written discovery authenticates the document for use against Defendants in any pretrial proceeding or at trial.

XII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer, and on final trial hereafter, Plaintiff has judgment against Defendants in an amount within the jurisdictional limits of this Court, together with all pre-judgment and post-judgment interest as allowed by law, costs of Court, for compensatory and exemplary damages, and for such other and further relief, in law and in equity, to which Plaintiff may be justly entitled.

RESPECTFULLY SUBMITTED,

/s/ Peter J. Rutter

Peter J. Rutter

DJC LAW, PLLC

SBN: 00791586

1012 W. Anderson Ln.

Austin, Texas 78757

pete@teamjustice.com

T: 512-220-1800

F: 512-220-1801

ATTORNEY FOR PLAINTIFF

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Madisen Lange on behalf of Peter John Rutter

Bar No. 791586

mlange@texasjustice.com

Envelope ID: 85563775

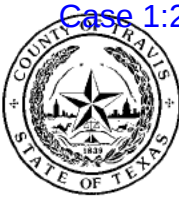
Filing Code Description: Petition

Filing Description: PLAINTIFF'S ORIGINAL PETITION

Status as of 3/18/2024 7:15 AM CST

Associated Case Party: SHARON FLEMING

Name	BarNumber	Email	TimestampSubmitted	Status
Madisen Lange		mlange@teamjustice.com	3/14/2024 2:33:29 PM	SENT
Peter J.Rutter		pete@teamjustice.com	3/14/2024 2:33:29 PM	SENT
Mateo Jaramillo		mateo@teamjustice.com	3/14/2024 2:33:29 PM	SENT



3/14/2024 2:33 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-24-001670
Ruben Tamez

SERVICE REQUEST FORM

Velva Price

District Clerk, Travis County
Civil Division (512) 854-9457

REQUESTED BY:

ATTORNEY/FILER: Peter J. Rutter

PHONE #: (512) 220-1800

EMAIL: pete@teamjustice.com; cc: mlang@teamjustice.com

SUBMITTED BY: Peter J. Rutter

TITLE: Attorney for Plaintiff

SIGNATURE: /s/ *Peter J. Rutter*

ISSUE PROCESS FOR:

CAUSE #: D-1-GN-24-001670

CASE STYLE: Fleming v. Gateway Square LLC, et al.

QUICK CITATION REQUEST: (FOR SERVICE OF CITATION ON ALL DEFENDANTS BY PERSONAL)

ISSUE CITATION TO ALL DEFENDANTS LISTED IN THE ORIGINAL PETITION AT THE ADDRESS SPECIFIED IN THE PETITION AND FORWARD THE CITATION(S) TO THE FOLLOWING:

☐ TRAVIS CO. CONSTABLE (specify):

☐ CERTIFIED MAIL BY CLERK ☒ ATTORNEY/REQUESTER

☐ PRIVATE PROCESS AGENCY (specify):

☐ I HAVE INCLUDED ATTACHMENTS TO THIS REQUEST (e.g. DISCOVERY) TO INCLUDE

DETAILED SERVICE REQUEST: (ON PARTICULAR PARTIES, BY VARIOUS DELIVERY METHODS, OR FOR NON-CITATION)

DESCRIPTION OF INSTRUMENT(S) TO BE SERVED: Plaintiff's Original Petition

☐ I HAVE INCLUDED ATTACHMENTS TO THIS REQUEST (e.g. discovery) TO INCLUDE IN THE CITATION N/A

TYPE OF PROCESS TO ☒ CITATION ☐ CERTIFIED NOTICE ☐ PROTECTIVE ORDER* ☐ TRO*^ ☐ INJUNCTION*^ ☐ SEQUESTRATION*^
ISSUE: ☐ ATTACHMENT* ☐ EXECUTION* ☐ ABSTRACT* ☐ SUPERSEDEAS^ ☐ SCIRE FACIAS* ☐ OTHER^

*SPECIFY TITLE AND DATE OF UNDERLYING ORDER IN CASE RECORD:

N/A

^ATTACH A COPY OF BOND AND/OR OTHER SUPPORTING DOCUMENT

SERVICE TO BE ISSUED:

PARTY NAME: Gateway Square LLC

PARTY TYPE: Defendant

☒ USE ADDRESS IN ORIGINAL PETITION ☐ SECRETARY OF STATE

☐ OTHER ADDRESS:

EMAIL PROCESS TO:

☐ TRAVIS CO. CONSTABLE

☒ ATTORNEY/REQUESTOR

☐ PRIVATE PROCESS AGENCY:

Process Agency Name:

SERVE VIA:

☒ PERSONAL SERVICE

☐ CERTIFIED MAIL (BY CONSTABLE)

☐ CERTIFIED MAIL (BY CLERK)

☐ CITATION BY POSTING*

☐ CITATION BY PUBLICATION*

PARTY NAME: WPG Texas Properties, LLC

PARTY TYPE: Defendant

☒ USE ADDRESS IN ORIGINAL PETITION ☐ SECRETARY OF STATE

☐ OTHER ADDRESS:

EMAIL PROCESS TO:

☐ TRAVIS CO. CONSTABLE

☒ ATTORNEY/REQUESTOR

☐ PRIVATE PROCESS AGENCY:

Process Agency Name:

SERVE VIA:

☒ PERSONAL SERVICE

☐ CERTIFIED MAIL (BY CONSTABLE)

☐ CERTIFIED MAIL (BY CLERK)

☐ CITATION BY POSTING*

☐ CITATION BY PUBLICATION*

PARTY NAME: Washington Prime Management Associates, LLC

PARTY TYPE: Defendant

☒ USE ADDRESS IN ORIGINAL PETITION ☐ SECRETARY OF STATE

☐ OTHER ADDRESS:

EMAIL PROCESS TO:

☐ TRAVIS CO. CONSTABLE

☒ ATTORNEY/REQUESTOR

☐ PRIVATE PROCESS AGENCY:

Process Agency Name:

SERVE VIA:

☒ PERSONAL SERVICE

☐ CERTIFIED MAIL (BY CONSTABLE)

☐ CERTIFIED MAIL (BY CLERK)

☐ CITATION BY POSTING*

☐ CITATION BY PUBLICATION*

*THIS TYPE OF SERVICE MAY REQUIRE A COURT ORDER. ENTER DATE OF SERVICE ORDER IN CASE RECORD:

ADDITIONAL INSTRUCTIONS FOR CLERK OR FOR OFFICER SERVING PROCESS:

Please email citations to mlang@teamjustice.com.

FOR ADDITIONAL PARTIES TO BE SERVED, USE e-FILED PROCESS ISSUANCE REQUEST FORM ADDENDUM

EXHIBIT D-2

VELVA PRICE
TRAVIS COUNTY DISTRICT CLERK
CIVIL DIVISION (512) 854-9457

SERVICE REQUEST FORM

Cause #:	Case Style:	
PARTY NAME: Ulta Salon, Cosmetics & Fragrance, Inc. PARTY TYPE: Defendant <input checked="" type="checkbox"/> USE ADDRESS IN ORIGINAL PETITION <input type="checkbox"/> SECRETARY OF STATE <input type="checkbox"/> OTHER ADDRESS:	EMAIL PROCESS TO: <input type="checkbox"/> TRAVIS CO. CONSTABLE <input checked="" type="checkbox"/> ATTORNEY/REQUESTOR <input type="checkbox"/> PRIVATE PROCESS AGENCY: Process Agency Name:	SERVE VIA: <input checked="" type="checkbox"/> PERSONAL SERVICE <input type="checkbox"/> CERTIFIED MAIL (BY CONSTABLE) <input type="checkbox"/> CERTIFIED MAIL (BY CLERK) <input type="checkbox"/> CITATION BY POSTING* <input type="checkbox"/> CITATION BY PUBLICATION*
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*This Type of Service may require a court order. Enter date of service order in case record: N/A

EXHIBIT D-2

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Madisen Lange on behalf of Peter John Rutter
Bar No. 791586
mlange@texasjustice.com
Envelope ID: 85563775
Filing Code Description: Petition
Filing Description: PLAINTIFF'S ORIGINAL PETITION
Status as of 3/18/2024 7:15 AM CST

Associated Case Party: SHARON FLEMING

Name	BarNumber	Email	TimestampSubmitted	Status
Madisen Lange		mlange@teamjustice.com	3/14/2024 2:33:29 PM	SENT
Peter J.Rutter		pete@teamjustice.com	3/14/2024 2:33:29 PM	SENT
Mateo Jaramillo		mateo@teamjustice.com	3/14/2024 2:33:29 PM	SENT

4/4/2024 3:48 PM

Velva L. Price

District Clerk

Travis County

D-1-GN-24-001670

Eva Fairchild

RETURN OF SERVICE

State of Texas

County of Travis

419TH DISTRICT Court

Case Number: D-1-GN-24-001670

Plaintiff: **SHARON FLEMING**

vs.

Defendant: **vs.**

GATEWAY SQUARE LLC; WPG TEXAS PROPERTIES, LLC;

WASHINGTON PRIME MANAGEMENT

ASSOCIATES, LLC; ULTA SALON, COSMETICS & FRAGRANCE, INC.

For:

Peter Rutter

DC LAW, PLLC

1012 W. Anderson Ln.

Austin, TX 78757

Received by Bloodhound Investigations on the 27th day of March, 2024 at 10:54 am to be served on **WPG TEXAS PROPERTIES, LLC C/O REGISTERED AGENT PARACORP INCORPORATED, 1999 Bryan St. Ste 900, Dallas, TX 75201.**

I, Kenneth Frechette, do hereby affirm that on the **3rd day of April, 2024 at 12:49 pm, I:**

delivered a true copy of Citation and Copy of Plaintiff's Original Petition to George Martinez as Intake Specialist in person, having first endorsed the date of delivery on same at the address of 1999 Bryan St. Ste. 900, Dallas, TX 75201.

My name is Kenneth Frechette, my date of birth is 03/11/1980 and my address is P.O. Box 131621, Dallas, Texas, 75313. I declare under penalty of perjury under the laws of the United States that the foregoing information contained in the return of service is true and correct and that the declaration was executed on 4/3/2024.

Additional Information pertaining to this Service:

4/1/24 12:40pm - attempted service. Spoke with Terri Yin, she advised that they are not currently a registered agent for this company. She looked it up in their system and cannot accept. She also looked it up on the SOS and it came back as no on file. She's not able to accept.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Texas Process Server, in good standing, in the judicial circuit in which the process was served.



Kenneth Frechette

PSC 13712 Exp. 12/31/24

Bloodhound Investigations

8120 Research Blvd.

Ste 105-339

Austin, TX 78758

(512) 956-5534

Our Job Serial Number: ADL-2024000251

Ref: 2024000251

RETURN OF NON-SERVICE

State of Texas

County of Travis

419TH DISTRICT Court

Case Number: D-1-GN-24-001670

Plaintiff: **SHARON FLEMING**

vs.

Defendant: **vs.**

**GATEWAY SQUARE LLC; WPG TEXAS PROPERTIES, LLC;
WASHINGTON PRIME MANAGEMENT
ASSOCIATES, LLC; ULTA SALON, COSMETICS & FRAGRANCE, INC.**

For:

Peter Rutter
DC LAW, PLLC
1012 W. Anderson Ln.
Austin, TX 78757

Received by Bloodhound Investigations on the 27th day of March, 2024 at 10:54 am to be served on **WPG TEXAS PROPERTIES, LLC C/O REGISTERED AGENT PARACORP INCORPORATED, 3610-2 NORTH JOSEY LANE, SUITE 223, CARROLLTON, TX 75007.**

I, Kenneth Frechette, do hereby affirm that on the **1st day of April, 2024 at 12:49 pm, I:**

NON-SERVED the Citation and Copy of Plaintiff's Original Petition. After due search, careful inquiry and diligent attempts was unable to serve on **WPG TEXAS PROPERTIES, LLC C/O REGISTERED AGENT PARACORP INCORPORATED** at 3610-2 NORTH JOSEY LANE, SUITE 223, CARROLLTON, TX 75007 for the reasons detailed in the comments below.

4/1/24 12:40pm - attempted service. Spoke with Terri Yin, she advised that they are not currently a registered agent for this company. She looked it up in their system and cannot accept. She also looked it up on the SOS and it came back as no on file. She's not able to accept.

My name is Kenneth Frechette, my date of birth is 03/11/1980 and my address is P.O. Box 131621, Dallas, Texas, 75313. I declare under penalty of perjury under the laws of the United States that the foregoing information contained in the return of service is true and correct and that the declaration was executed on 4/1/2024.

Additional Information pertaining to this Service:

4/1/24 12:40pm - attempted service. Spoke with Terri Yin, she advised that they are not currently a registered agent for this company. She looked it up in their system and cannot accept. She also looked it up on the SOS and it came back as no on file. She's not able to accept.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Texas Process Server, in good standing, in the judicial circuit in which the process was served.



Kenneth Frechette
PSC 13712 Exp. 12/31/24

Bloodhound Investigations
8120 Research Blvd.
Ste 105-339
Austin, TX 78758
(512) 956-5534

Our Job Serial Number: ADL-2024000251
Ref: 2024000251

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Madisen Lange on behalf of Peter John Rutter

Bar No. 791586

mlange@texasjustice.com

Envelope ID: 86312265

Filing Code Description: UNEXECUTED RETURN OF SERVICE

Filing Description: RETURN OF NON SERVICE - WPG TEXAS

PROPERTIES, LLC

Status as of 4/4/2024 4:33 PM CST

Associated Case Party: SHARON FLEMING

Name	BarNumber	Email	TimestampSubmitted	Status
Madisen Lange		mlange@teamjustice.com	4/4/2024 3:48:55 PM	SENT
Peter J.Rutter		pete@teamjustice.com	4/4/2024 3:48:55 PM	SENT
Mateo Jaramillo		mateo@teamjustice.com	4/4/2024 3:48:55 PM	SENT



Notice of Service of Process

null / ALL
Transmittal Number: 29104312
Date Processed: 05/14/2024

Primary Contact: Legal Department null
Ulta Salon, Cosmetics & Fragrance, Inc.
1000 Remington Blvd.
Ste 120
Bolingbrook, IL 60440-4708

Electronic copy provided to: Ashley Wyrobek
Esme Recendez
Jodi Caro
Kelly Nelson

Entity:	Ulta Salon, Cosmetics & Fragrance, Inc. Entity ID Number 0199311
Entity Served:	Ulta Salon, Cosmetics & Fragrance, Inc.
Title of Action:	Sharon Fleming vs. Gateway Square LLC
Matter Name/ID:	Sharon Fleming vs. Gateway Square LLC (15701161)
Document(s) Type:	Citation/Petition
Nature of Action:	Personal Injury
Court/Agency:	Travis County District Court, TX
Case/Reference No:	D-1-GN-24-001670
Jurisdiction Served:	Texas
Date Served on CSC:	05/14/2024
Answer or Appearance Due:	10:00 am Monday next following the expiration of 20 days after service
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	DJC Law, PLLC 512-220-1800

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

EXHIBIT D-4

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-24-001670

SHARON FLEMING

, PLAINTIFF(S)

vs.

GATEWAY SQUARE LLC; WPG TEXAS PROPERTIES, LLC; WASHINGTON PRIME MANAGEMENT ASSOCIATES, LLC; ULTA SALON, COSMETICS & FRAGRANCE, INC.

, DEFENDANT(S)

TO: **ULTA SALON, COSMETICS & FRAGRANCE, INC.**
BY SERVING ITS REGISTERED AGENT
PRENTICE HALL CORPORATION SYSTEM
211 E 7TH STREET SUITE 620
AUSTIN TX 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Attached is a copy of the **PLAINTIFF S ORIGINAL PETITION** in the above styled and numbered cause, which was filed on **MARCH 14, 2024** in the **419TH DISTRICT COURT** of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, **MARCH 18, 2024**

REQUESTED BY:
PETER J RUTTER
1012 W ANDERSON LN
AUSTIN, TX 78757



Velva L Price
Travis County District Clerk
Civil Family Court Facility (CFCF)
1700 Guadalupe Street | P.O. Box 678003 (78767)
Austin TX 78701

Ruben Tamez, Deputy

RETURN

Came to hand on the _____ day of _____, _____ at _____ o'clock _____ M., and executed at _____ within the County of _____ on the _____ day of _____, _____, at _____ o'clock _____ M., by delivering to the within named _____, each in person, a true copy of this citation together with the **PLAINTIFF S ORIGINAL PETITION** accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the _____ day of _____, _____.

By: _____

Printed Name of Server

County, Texas

Notary Public, THE STATE OF TEXAS
D-1-GN-24-001670

SERVICE FEE NOT PAID

EXHIBIT D-4

5/15/2024 5:43 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-24-001670
Eva Fairchild

RETURN OF SERVICE

State of Texas

County of Travis

419TH DISTRICT Court

Case Number: D-1-GN-24-001670

Plaintiff: **SHARON FLEMING**

vs.

Defendant: **vs.**

**GATEWAY SQUARE LLC; WPG TEXAS PROPERTIES, LLC;
WASHINGTON PRIME MANAGEMENT
ASSOCIATES, LLC; ULTA SALON, COSMETICS & FRAGRANCE, INC.**

For:

Peter Rutter
DC LAW, PLLC
1012 W. Anderson Ln.
Austin, TX 78757

Received by Bloodhound Investigations on the 14th day of May, 2024 at 1:14 pm to be served on **Gateway Square LLC may be served through its Registered Agent CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201.**

I, Kenneth Frechette, do hereby affirm that on the **15th day of May, 2024 at 1:26 pm, I:**

delivered a true copy of Citation and Copy of Plaintiff's Original Petition to Terri Thongsavat as Intake Specialist in person, having first endorsed the date of delivery on same at the address of 1999 Bryan St., Ste. 900, Dallas, TX 75201.

My name is Kenneth Frechette, my date of birth is 03/11/1980 and my address is P.O. Box 131621, Dallas, Texas, 75313. I declare under penalty of perjury under the laws of the United States that the foregoing information contained in the return of service is true and correct and that the declaration was executed on 5/15/2024.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Texas Process Server, in good standing, in the judicial circuit in which the process was served.


Kenneth Frechette

PSC 13712 Exp. 12/31/24

**Bloodhound Investigations
8120 Research Blvd.
Ste 105-339
Austin, TX 78758
(512) 956-5534**

Our Job Serial Number: ADL-2024000433
Ref: 2024000433

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Madisen Lange on behalf of Peter John Rutter

Bar No. 791586

mlange@texasjustice.com

Envelope ID: 87793722

Filing Code Description: EXECUTED SERVICE

Filing Description: EXECUTED RETURN SERVICE OF CITATION

-GETAWAY SQUARE, LLC

Status as of 5/16/2024 1:20 PM CST

Associated Case Party: SHARON FLEMING

Name	BarNumber	Email	TimestampSubmitted	Status
Madisen Lange		mlange@teamjustice.com	5/15/2024 5:43:52 PM	SENT
Peter J.Rutter		pete@teamjustice.com	5/15/2024 5:43:52 PM	SENT
Mateo Jaramillo		mateo@teamjustice.com	5/15/2024 5:43:52 PM	SENT

5/15/2024 5:43 PM

Velva L. Price

District Clerk

Travis County

D-1-GN-24-001670

Eva Fairchild

RETURN OF SERVICE

State of Texas

County of Travis

419TH DISTRICT Court

Case Number: D-1-GN-24-001670

Plaintiff: **SHARON FLEMING**

vs.

Defendant: **vs.**

GATEWAY SQUARE LLC; WPG TEXAS PROPERTIES, LLC;

WASHINGTON PRIME MANAGEMENT

ASSOCIATES, LLC; ULTA SALON, COSMETICS & FRAGRANCE, INC.

For:

Peter Rutter

DC LAW, PLLC

1012 W. Anderson Ln.

Austin, TX 78757

Received by Bloodhound Investigations on the 14th day of May, 2024 at 1:14 pm to be served on **Washington Prime Management Associates, LLC may be served through its Registered Agent CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201.**

I, Kenneth Frechette, do hereby affirm that on the **15th day of May, 2024 at 1:26 pm, I:**

delivered a true copy of Citation and Copy of Plaintiff's Original Petition to Terri Thongsavat in person, having first endorsed the date of delivery on same at the address of 1999 Bryan St., Ste. 900, Dallas, TX 75201.

My name is Kenneth Frechette, my date of birth is 03/11/1980 and my address is P.O. Box 131621, Dallas, Texas, 75313. I declare under penalty of perjury under the laws of the United States that the foregoing information contained in the return of service is true and correct and that the declaration was executed on 5/15/2024.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Texas Process Server, in good standing, in the judicial circuit in which the process was served.



Kenneth Frechette

PSC 13712 Exp. 12/31/24

Bloodhound Investigations

8120 Research Blvd.

Ste 105-339

Austin, TX 78758

(512) 956-5534

Our Job Serial Number: ADL-2024000434

Ref: 2024000434

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Madisen Lange on behalf of Peter John Rutter

Bar No. 791586

mlange@texasjustice.com

Envelope ID: 87793722

Filing Code Description: EXECUTED SERVICE

Filing Description: EXECUTED RETURN SERVICE OF CITATION

-GETAWAY SQUARE, LLC

Status as of 5/16/2024 1:20 PM CST

Associated Case Party: SHARON FLEMING

Name	BarNumber	Email	TimestampSubmitted	Status
Peter J.Rutter		pete@teamjustice.com	5/15/2024 5:43:52 PM	SENT
Mateo Jaramillo		mateo@teamjustice.com	5/15/2024 5:43:52 PM	SENT
Madisen Lange		mlange@teamjustice.com	5/15/2024 5:43:52 PM	SENT

CAUSE NO. D-1-GN-24-001670

SHARON FLEMING	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
GATEWAY SQUARE LLC,	§	
WPG TEXAS PROPERTIES, LLC	§	
WASHINGTON PRIME MANAGEMENT	§	
ASSOCIATES, LLC and ULTA SALON,	§	
COSMETICS & FRAGRANCE, INC.	§	419 TH JUDICIAL DISTRICT

**DEFENDANTS' GATEWAY SQUARE LLC AND WASHINGTON PRIME
MANAGEMENT ASSOCIATES ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

COME NOW Gateway Square LLC and Washington Prime Management Associates, LLC ("Defendants") and file their Answer to Plaintiff's Original Petition and would show the Court as follows:

**I.
GENERAL DENIAL**

Pursuant to Texas Rule of Civil Procedure 92, Defendants enter its general denial and respectfully requests that Sharon Fleming ("Plaintiff") be required to prove her charges, assertions, and allegations by clear and convincing evidence as is required by the laws of the State of Texas.

Defendants pray that, upon final hearing, judgment be entered that Plaintiff take nothing and that Defendants be dismissed with its costs.

**II.
PLAINTIFF'S CONTENTIONS**

Pleading additionally, or in the alternative, Defendants assert that the accident made the basis of this suit did not occur in the fashion or manner alleged by Plaintiff.

III.
SOLE PROXIMATE CAUSE

Pleading additionally, or in the alternative, Defendants further allege that at the times and places and on the occasions in question, the Plaintiff failed to exercise that degree of care which an ordinarily prudent person in the exercise of ordinary care would have exercised under the same or similar circumstances, and such failure was the sole proximate cause of the occurrence made the basis of this suit.

IV.
LIMITATION OF LIABILITY

Pleading alternatively, Defendants invoke the liability and damages limitations of §41.008 of the Texas Civil Practice & Remedies Code.

V.
TEXAS CIVIL PRACTICE & REMEDIES CODE § 41.0105

Defendants hereby invoke and asserts the provisions of the Section 41.0105 of the Texas Civil Practice and Remedies Code.

VI.
LIABILITY OF THIRD PARTIES

Defendants further allege that the occurrence made the basis of this suit was caused in whole or in part by third persons, including, but not limited to the other parties over whom these Defendants had no control and for whose acts and/or omissions it was not in fact nor in law responsible.

VII.

Pleading further, if same be necessary, Defendants will show that no act or omission of Defendants was the cause of any injury to Plaintiff.

VIII.
FAILURE TO MITIGATE

Defendants would show that Plaintiff failed to mitigate her damages in that she failed to take reasonable precautions to protect herself and to mitigate their injuries and monetary losses.

IX.
PROPORTIONATE RESPONSIBILITY

While continuing to deny that Plaintiff's injuries and damages, if any, were proximately caused by Defendants, pursuant to Chapter 33, Texas Civil Practice & Remedies Code, answering Defendants request a determination of whether the purported injuries and damages to Plaintiff were proximately caused or produced by the conduct of Plaintiff and/or other persons or parties, and, if so, the percentage of such causation attributable to the Plaintiff, other persons or parties found to have been a cause of any of the Plaintiff's alleged injuries, losses or damages, and to reduce and/or apportion the judgment, if any, by the degree of such causation attributed to the Plaintiff, other persons or parties.

X.
CONTRIBUTORY NEGLIGENCE

Defendants assert as an additional affirmative defense, if same be necessary, that Plaintiff was contributorily negligent.

XI.
PRE-EXISTING CONDITIONS

Plaintiff's injuries and damages, if any, were the result, in whole or in part, of pre-existing or subsequent conditions and were not the result of any act or omission on the part of answering Defendants and/or the uninsured motorist.

XII.
NOTICE

Defendants hereby plead that it owed Plaintiff no duty because the condition she complains of was either open and obvious or known to Plaintiff and/or Defendants did not know nor could have known of the existence of the alleged condition.

XIII.
NET LOSS

Defendants further invoke and asserts the provisions of Texas Civil Practice & Remedies Code §18.091.

XIV.
RIGHT TO AMEND

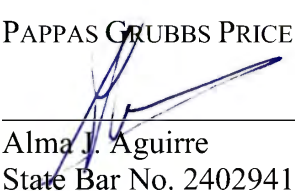
Pleading additionally and pleading in the alternative as authorized by the Texas Rules of Civil Procedure, Defendants reserve the right to amend its answer following further discovery in this case and as allowed by Texas law.

XVII.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants Gateway Square LLC and Washington Prime Management Associates pray that after trial, Plaintiff recover nothing, and that Defendants be discharged with its costs.

Respectfully submitted,

PAPPAS GRUBBS PRICE PC



Alma J. Aguirre
State Bar No. 24029414
Email: aaguirre@pappasgrubbs.com
Two Houston Center
909 Fannin, Suite 2500
Houston, Texas 77010
713.951.1000 – telephone
713.951.1199 – facsimile

**ATTORNEYS FOR DEFENDANTS
GATEWAY SQUARE LLC AND
WASHINGTON PRIME MANAGEMENT
ASSOCIATES, LLC**

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing document was forwarded by facsimile to all counsel of record on the 6th day of June 2024.



Alma J. Aguirre

Fleming - Original Answer(7567674.1)

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Drejoin Ellington on behalf of Alma Aguirre

Bar No. 24029414

dellington@pappasgrubbs.com

Envelope ID: 88533073

Filing Code Description: Answer/Response

Filing Description: DEFENDANTS' GATEWAY SQUARE LLC AND WASHINGTON PRIME MANAGEMENT ASSOCIATES ANSWER TO PLAINTIFF'S ORIGINAL PETITION

Status as of 6/7/2024 12:26 PM CST

Associated Case Party: SHARON FLEMING

Name	BarNumber	Email	TimestampSubmitted	Status
Madisen Lange		mlange@teamjustice.com	6/6/2024 3:57:46 PM	SENT
Peter J.Rutter		pete@teamjustice.com	6/6/2024 3:57:46 PM	SENT
Mateo Jaramillo		mateo@teamjustice.com	6/6/2024 3:57:46 PM	SENT

Associated Case Party: WASHINGTON PRIME MANAGEMENT ASSOCIATES, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Alma Aguirre		aaguirre@pappasgrubbs.com	6/6/2024 3:57:46 PM	SENT
Drejoin Ellington		dellington@pappasgrubbs.com	6/6/2024 3:57:46 PM	SENT

6/7/2024 4:36 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-24-001670
Eva Fairchild

CAUSE NO: D-1-GN-24-001670

SHARON FLEMING
Plaintiff,

vs.

GATEWAY SQUARE LLC, ET. AL.
Defendants.

§
§
§
§
§
§
§

IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

NOTICE OF APPEARANCE

The undersigned hereby gives notice of their appearance in the above-referenced proceedings on behalf of Defendant Ulta Salon, Cosmetics & Fragrance, Inc. (“Ulta”). All future notices and pleadings in the above-referenced proceeding should be served on the undersigned at the address set forth above.

Respectfully submitted,

DINSMORE & SHOHL, PLLC

/s/ Sarah R. Smith

Sarah R. Smith

Texas Bar No. 24056346

sarah.smith@lewisbrisbois.com

Amanda L. Catalani

Texas Bar No. 24101602

amanda.catalai@lewisbrisbois.com

DINSMORE & SHOHL, PLLC

12 Greenway Plaza, Suite 1100

Houston, Texas 77046

Tel: 346.293.7878

Fax: 346.293.7877

**ATTORNEYS FOR DEFENDANT
ULTA SALON, COSMETICS &
FRAGRANCE, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of 2024, a true and correct copy of the foregoing *Notice of Appearance* was served on all parties and counsel of record via electronic service through the court's electronic-filing manager and/or email pursuant to the Texas Rules of Civil Procedure.

/s/ Sarah R. Smith

Sarah R. Smith

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 88584564

Filing Code Description: Notice

Filing Description: NOTICE OF APPEARANCE

Status as of 6/10/2024 4:58 PM CST

Associated Case Party: SHARON FLEMING

Name	BarNumber	Email	TimestampSubmitted	Status
Madisen Lange		mlange@teamjustice.com	6/7/2024 4:36:25 PM	SENT
Peter J.Rutter		pete@teamjustice.com	6/7/2024 4:36:25 PM	SENT
Mateo Jaramillo		mateo@teamjustice.com	6/7/2024 4:36:25 PM	SENT

Associated Case Party: WASHINGTON PRIME MANAGEMENT ASSOCIATES, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Alma Aguirre		aaguirre@pappasgrubbs.com	6/7/2024 4:36:25 PM	SENT
Drejoin Ellington		dellington@pappasgrubbs.com	6/7/2024 4:36:25 PM	SENT

Associated Case Party: ULTA SALON, COSMETICS & FRAGRANCE, INC.

Name	BarNumber	Email	TimestampSubmitted	Status
Debbie Trevino		debbie.trevino@dinsmore.com	6/7/2024 4:36:25 PM	SENT
Ronnette VanHoose		ronnette.vanhooose@dinsmore.com	6/7/2024 4:36:25 PM	SENT
Sarah R.Smith		sarah.smith@dinsmore.com	6/7/2024 4:36:25 PM	SENT
Amanda LCatalani		amanda.catalani@dinsmore.com	6/7/2024 4:36:25 PM	SENT

6/10/2024 11:50 AM
 Velva L. Price
 District Clerk
 Travis County
 D-1-GN-24-001670
 Susan Schmidt

CAUSE NO: D-1-GN-24-001670

SHARON FLEMING
Plaintiff,

vs.

GATEWAY SQUARE LLC, ET. AL.
Defendants.

§
§
§
§
§
§
§

IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**DEFENDANT ULTA BEAUTY, INC.'S ORIGINAL ANSWER AND
 AFFIRMATIVE DEFENSES IN RESPONSE TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Ulta Salon, Cosmetics & Fragrance, Inc. ("Defendant") files its *Original Answer and Affirmative Defenses in Response to Plaintiff's Original Petition* and would respectfully show the Court the following:

**I.
 GENERAL DENIAL**

1. As authorized by TEXAS RULE OF CIVIL PROCEDURE 92, Defendant generally denies each allegation contained in Plaintiff's Original Petition and requests that Plaintiff be required to prove her charges and allegations against Defendant by a preponderance of the evidence and/or clear and convincing evidence as required by the Constitution and laws of the State of Texas.

**II.
 SPECIAL EXCEPTION**

2. Defendant specially excepts to Plaintiff's Original Petition, paragraph 11.00, in that it purports to designate all documents produced in this action as self-authenticating under TEXAS RULES OF CIVIL PROCEDURE 193.7. Plaintiffs' blanket designation is ineffective as actual notice and does not comport with the Rule. *See In re Ford Motor Company*, No. 13-22-00083-CV, 2022 Tex. App. LEXIS 6440 (Tex. App.-Corpus Christi-Edinburg Aug. 26, 2022, orig. proceeding).

III. AFFIRMATIVE DEFENSES

3. Defendant denies that it committed any wrongful conduct, whether knowingly, intentional, or otherwise, or that it acted with fraud or malice.

4. Defendant further alleges that at the times and places and on the occasions in question, Plaintiff failed to exercise that degree of care which an ordinarily prudent person in the exercise of ordinary care would have exercised under the same or similar circumstances, and such failure proximately caused or contributed to cause the occurrence made the basis of this suit.

5. Defendant assert that Plaintiff's injuries, losses, and damages, if any, were the result, in whole or in part, of pre-existing or subsequent conditions and were not the result of any act or omission on the part of Defendant.

6. Defendant asserts that Plaintiff failed to mitigate her damages, and, as such, Plaintiff's claims and causes of action against Defendant should be limited proportionally.

7. Plaintiff's claims are barred, in whole or in part, because there was an intervening or supervening cause for which Defendant cannot be held liable.

8. Defendant would further show that the damages, if any, sustained by Plaintiff were proximately caused, in whole or in part, by the fault, negligence, acts, or omissions of a third party or parties over whom Defendant had no control or right of control, either actual or constructive, and for whose acts Defendant is not and cannot be held responsible.

9. To the extent that some or all of Plaintiff's claims may have been fully adjusted and payment tendered, Plaintiff is only entitled to one satisfaction or recovery for her alleged damages.

10. Defendant specifically pleads, invokes, and reserves the following rights as guaranteed by Chapters 32 and 33 of Texas Civil Practice and Remedies Code to the extent they are ultimately applicable to this case:

- a. The right to a reduction of any dollar verdict which may be rendered in this case in accordance with §§33.012-.013 of the Texas Civil Practice and Remedies Code.
- b. The right to have the trier-of-fact compare the responsibility of each party, each settling person, and each responsible third party and assign percentages to such parties, persons, and responsible third parties to reduce or bar any claim against Defendant under the doctrine of proportionate responsibility or comparative negligence established by TEX. CIV. PRAC. & REM. CODE § 33.001, *et seq.*
- c. The right to contribution in accordance with the provisions of §§ 32.001 *et seq.* and §§ 33.015-.016 of the Texas Civil Practice and Remedies Code.

11. Defendant hereby invokes the limitation on the recoverability of lost earnings and loss of earning capacity pursuant to TEX. CIV. PRAC. & REM. CODE § 18.091. Further, if Plaintiff seeks recovery for loss of earnings, loss of earning capacity and/or loss of contributions of a pecuniary value, the Court shall instruct the jury as to whether any recovery for such compensatory damages sought by Plaintiff is subject to federal or state income taxes.

12. Defendant asserts that pursuant to TEX. CIV. PRAC. & REM. CODE § 41.0105, any recovery of medical or health care expenses incurred by Plaintiff is limited to the amounts actually paid or incurred by or on behalf of Plaintiff.

13. In the unlikely event Defendant is found at fault, the amount of prejudgment interest on any damages award is limited by law and, in no event, can exceed the amount set forth by §§ 304.001 *et seq.* of the Texas Finance Code or other applicable statutes.

14. If Defendant is found liable for exemplary damages, those damages must be limited and capped under the Texas Damages Act, §§ 41.003 – 41.012 of the Texas Civil Practice and Remedies Code and the Due Process Clauses of the United States and Texas Constitutions.

**IV.
RESERVATION OF RIGHTS**

Defendant reserves its right to amend its Answer to Plaintiff's pleadings until after it has had an opportunity to more closely investigate these claims, as is its right and privilege under the TEXAS RULES OF CIVIL PROCEDURE and the laws of the State of Texas.

**V.
JURY DEMAND**

Defendant requests a jury in this case and tenders the appropriate fee.

**VI.
PRAYER**

WHEREFORE PREMISES CONSIDERED, Defendant Ulta Salon, Cosmetics & Fragrance, Inc. prays that upon final trial and hearing hereof, that Plaintiff take nothing by reason of her suit, that Defendant be awarded costs incurred on behalf of this suit, and for such other relief, both general and special, for which Defendant may show itself justly entitled.

Respectfully submitted,

DINSMORE & SHOHL LLP

/s/ Sarah R. Smith

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**ATTORNEYS FOR DEFENDANT
ULTA SALON, COSMETICS &
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June 2024, a true and correct copy of the foregoing *Defendant Ulta Salon, Cosmetics & Fragrance, Inc. 's Original Answer in Affirmative Defenses in Response to Plaintiff's Original Petition* was served upon all parties of record in accordance with the Texas Rules of Civil Procedure via e-service:

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Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Debbie Trevino on behalf of Sarah Smith

Bar No. 24056346

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Envelope ID: 88613964

Filing Code Description: Answer/Response

Filing Description: DEFENDANT ULTA BEAUTY, INC.'S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES IN RESPONSE TO PLAINTIFF'S ORIGINAL PETITION

Status as of 6/10/2024 2:09 PM CST

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